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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM LITTLE ANDERSON,

Defendant and Appellant.

B207965

(Los Angeles County  
Super. Ct. No. YA021902)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark S. Arnold, Judge. Affirmed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillete, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon and A. Scott Hayward, Deputy Attorneys General, for Plaintiff and Respondent.

## **INTRODUCTION**

In 1996, defendant and appellant William Little Anderson was sentenced to 51 years to life. He was also ordered to pay restitution in the amount of \$3,500. Defendant twice appealed his sentence. Twice we remanded the matter to the trial court for resentencing. On neither remand did the trial court reference restitution. But in February 2008, by an order nunc pro tunc, the trial court amended the abstract of judgment to include the \$3,500 in restitution. Defendant now contends on appeal that the trial court issued the order “without authority.” We disagree and affirm the judgment.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In 1996, defendant was convicted of three counts of forgery and one count of battery. He was sentenced, under the Three Strikes law, to 51 years to life. He was also ordered to pay a restitution fine of \$3,500. On appeal, we remanded the matter to the trial court to allow it to determine whether to exercise its discretion to impose concurrent sentences on two of the forgery counts. (*People v. Anderson* (Oct. 13, 1998, B104623) [nonpub. opn.].)

On remand, the trial court resentenced defendant on June 25, 1999 to concurrent sentences on counts 1 and 3, thereby reducing the term to 26 years to life. The court did not refer to the \$3,500 in restitution. Defendant appealed again. Because the trial court had believed it did not have jurisdiction to reconsider the entire sentence on the first remand, we remanded a second time to allow the trial court to reconsider the entire sentence. This time, on remand, the trial court ruled in June 2001: “Court does not grant another re-sentencing hearing. Sentence of 6/25/99 stands, defendant to serve 26 years to life.” The court also awarded defendant presentence credits. The court was silent with respect to the original restitution ordered in 1996.

Thereafter, on February 11, 2008, the trial court amended the abstract of judgment nunc pro tunc to reimpose the \$3,500 restitution order.

## DISCUSSION

### **I. The trial court did not exceed its authority by issuing a nunc pro tunc order correcting the abstract of judgment.**

Defendant contends that the trial court did not have the authority to issue a nunc pro tunc order regarding restitution. We disagree.

Courts have inherent authority to correct clerical errors in a sentence at any time. (*In re Candelario* (1970) 3 Cal.3d 702, 705.) This authority, however, is limited to true clerical errors, not to judicial errors, and does not allow a court to declare that something was done which was not done. (*People v. Borja* (2002) 95 Cal.App.4th 481, 485.) “An amendment that substantially modifies the original judgment or materially alters the rights of the parties, may not be made by the court under its authority to correct clerical error . . . unless the record clearly demonstrates that the error was not the result of the exercise of judicial discretion.” (*In re Candelario*, at p. 705.) “The distinction between clerical error and judicial error is ‘whether the error was made in rendering the judgment, or in recording the judgment rendered.’ ” (*Ibid.*)

For example, judicial, not clerical, error was at issue in *People v. Borja, supra*, 95 Cal.App.4th 481. There, the defendant had been initially granted probation conditioned in part on a jail sentence of 365 days. Almost six years later, after the defendant had completed his probation, the defendant obtained a nunc pro tunc modification of the probation condition to a sentence of 364 days. This change was important to avoid the defendant’s deportation for an aggravated felony under federal immigration laws. (*Id.* at pp. 483-484.) The appellate court found the change invalid, because the court was not correcting a clerical order. (*Id.* at p. 485.) It was a retroactive change in sentence to avoid immigration consequences.

Unlike the order in *Borja*, the nunc pro tunc order was issued here to correct a clerical error, not a judicial one. The original 1996 sentence included the \$3,500 restitution order. When the court resentenced defendant in 1999 the court only revisited the sentence to impose concurrent sentences. Notably, the trial court believed it had no

authority to change any other part of the sentence. Thus, the court in 1999 believed that the rest of the sentence, including the restitution order, stood. This clerical error was then repeated in 2001, when the court, although it had been told it had jurisdiction to reconsider the entire sentence, declined to grant defendant a resentencing hearing. Instead, the court said the 1999 sentence would “stand.” The court, however, once again did not restate the restitution order. This error again was merely clerical, not judicial. The error was merely in recording the judgment, not in rendering it. The court therefore did not exceed its authority in 2008 by correcting the abstract of judgment nunc pro tunc to include the restitution order of \$3,500.

#### **DISPOSITION**

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.